IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.172 OF 2005

Kishan Naraindas Daryani & Ors. ...Appellants

Vs.

Pessumal Chimandas Veleja & Ors. ...Respondents

Mr.G.S.Godbole i/b Jaiwant S.Chandanani for the Appellants
Mr.R.S.Apte with A.A.Garge for Respondent Nos.1 to 6
Mr. Vijay Patil for Respondent No.8.

CORAM: A.S.OKA, J.
DATED: MARCH 9,2005.

OPERATIVE ORDER :

1. For the reasons separately recorded in the Judgment following is the operative order :

a) The statement made by Shri Godbole on instructions of the Appellants that a sum of Rs.5,00,000/- will be deposited in this Court by four demand drafts is accepted. Accordingly, the Appellants will deposit a sum of Rs.5,00,000/- within a period of three days from today with the Registrar General of this Court. After the Demand Drafts are encashed the Registrar General of this Court will transfer the said amount to the Court of the Additional District Judge, Kalyan. After the transfer of the said amount from this Court, the Additional District Judge, Kalyan shall invest the same in Fixed Deposit in any Nationalised Bank initially for a period of six months. He will keep the amount invested in fixed

deposit till the disposal of the Application at Exh.74.

b) It is made clear that deposit of the said amount by the Appellants is without prejudice to their rights and contentions in the pending Appeal and pending suit.

c) The impugned order dated 17th January 2005 is quashed and set aside and the Application at Exh.74 is remanded to the lower Appellate Court. The Appellate Court will decide the Application at Exh.74 afresh in the light of the observations made in this Judgement. The remand will be restricted as laid down in this Judgment.

d) The parties will appear before the learned 3rd Ad hoc Additional District Judge, Kalyan Court on 4th April 2005 at 11.00 a.m. for fixing the schedule of hearing of application Exh.74. It will be open for the Appellants to lead evidence either oral or by Affidavit as may be decided by the Appellate Court. It will be open for the Appellants to file additional reply to the Application at Exh.74 for dealing with the events which have taken place after filing of the reply in the year 1991. It will be also open to the Respondent Nos.1 to 6 to lead evidence and place further material on record.

e) Application at Exh.74 shall be heard and decided by the Additional District Judge, Kalyan as expeditiously as

possible and in any event on or before 30th September 2005. While disposing of the Application at Exh.74, the Appellate Court will pass an appropriate order as regards disbursement and/or investment and/or refund of a sum of Rs.5,00,000/- deposited by the Appellant. Till the disposal of the Application, the order of attachment passed by the impugned order will continue to operate as interim order subject to final order which may be passed on application at Exh.74. It is clarified that the action which may be taken by the Respondent No.8 against the offending structure will be strictly in accordance with law.

f) The Appeal is partly allowed in above terms subject to the condition that the Appellants will pay costs of Rs.7500/- to the Respondent No.1 and costs of Rs.7500/- to the Respondent No.8 within a period of four weeks from today.

g) Parties and the concerned court to act upon an authenticated copy of this order.

i) The office will act upon an authenticated copy of operative part of this order for accepting the amount of Rs.5,00,000/-.

Judge.